

APPEAL NO. 002729

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 29, 2000. With regard to the issues before him, the hearing officer determined that the appellant (claimant) had not sustained an injury in the course and scope of employment on _____, and that the claimant did not have disability.

The claimant appeals, asserting that his slip and fall was much more serious than that found by the hearing officer. The claimant requests that we reverse the hearing officer's decision and render a decision in his favor. The respondent (carrier) responds that it had not received a copy of the claimant's appeal until November 28, 2000, when it was received from the Texas Workers' Compensation Commission (Commission) Appeals Panel. The claimant responds by providing evidence of mailing on November 13, 2000.

DECISION

A timely appeal not having been filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

Records of the Commission show that the decision of the hearing officer was mailed to the claimant on October 27, 2000, under a cover letter of the same date. The claimant, in his appeal, states that he received the hearing officer's decision on November 1, 2000.

Section 410.202(a) provides that, "[t]o appeal the decision of a hearing officer, a party shall file a written request for appeal with the appeals panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party." Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that a request for appeal shall be presumed to be timely filed if it is: (1) mailed on or before the 15th day after the date of receipt of the hearing officer's decision; and (2) received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be complied with in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994; Texas Workers' Compensation Commission Appeal No. 941255, decided November 1, 1994 (Unpublished); Texas Workers' Compensation Commission Appeal No. 991565, decided August 23, 1999 (Unpublished).

To be presumed timely filed, the claimant's appeal must have been mailed no later than November 16, 2000, and received by the Commission no later than November 21, 2000. While the claimant's appeal is not dated, the certificate of service and the postmark on the envelope containing the claimant's appeal are dated November 13, 2000. However, the claimant's appeal was not received by the Commission until Tuesday, November 28, 2000. The address on the envelope has one number of the Post Office Box scratched out and has the correct number written in. Furthermore, the correct zip code (78704-0012) is scratched out and an incorrect zip code (78760) written in. In any event, the appeal, while

timely mailed, was not received within the 20 days after receipt of the hearing officer's decision and is therefore untimely, being seven days after November 21, 2000. Consequently, it is not necessary to address the timeliness of the carrier's response.

The claimant's appeal being untimely, the decision of the hearing officer has become final. Section 410.169.

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

Judy L. Stephens
Appeals Judge